

MONTANA LEGISLATIVE HISTORY

Chapter 429 19 77

Bill H 242 S _____ Original bill & history C

H. Committee on State Admin

Hearing Date(s) Feb 02 ✓ C

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Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) Mar 18 ✓ C

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Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

H. Comm. Local Govt

Feb 11

Feb 16

1 H BILL NO. 247
 2 INTRODUCED BY Palmer
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 5 CLARIFY THE LAWS RELATING TO MUNICIPAL COURTS; TO CHANGE THE
 6 POPULATION REQUIREMENT FOR CITIES ADOPTING MUNICIPAL COURTS
 7 FROM 20,000 TO 10,000; TO PROVIDE THAT MUNICIPAL COURT
 8 JUDGES BE ELECTED EVERY FOUR YEARS; TO PROVIDE
 9 QUALIFICATIONS FOR AND RESTRICTIONS ON MUNICIPAL COURT
 10 JUDGES; TO PROVIDE THAT THE CITY PROVIDE THE FACILITIES FOR
 11 THE COURT; TO PRESCRIBE THE SESSIONS OF THE COURT; AND TO
 12 PRESCRIBE THE AMOUNT AND DISPOSITION OF FINES IN THE COURT;
 13 AMENDING SECTIONS 11-1701, 11-1703, 11-1704, 11-1705,
 14 11-1708, 11-1710, 11-1711, AND 11-1718, R.C.M. 1947;
 15 REPEALING SECTION 11-1709, R.C.M. 1947."
 16
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 18 Section 1. Section 11-1701, R.C.M. 1947, is amended to
 19 read as follows:
 20 "11-1701. Municipal ~~courts~~ ~~cities~~ ~~where~~ ~~creation~~
 21 ~~authorized~~ ~~adoption~~ ~~of~~ ~~provisions~~ ~~concerning~~ ~~Establishment~~
 22 ~~of municipal court.~~ (1) ~~There is hereby created in all~~ All
 23 cities in the state of Montana with a population of twenty
 24 thousand ~~--(20,000)~~ 10,000 or more persons, according to the
 25 last federal census, ~~shall have~~ a court to be known and

1 designated as the municipal court of the city of
 2 (designating the name of the city) of the state of Montana.
 3 Such ~~the~~ court shall be a court of record.
 4 (2) ~~provided; however that the~~ The provisions of this
 5 ~~act shall~~ ~~chapter~~ apply only after the governing body or
 6 council of such ~~the~~ city or cities ~~shall have~~ has elected by
 7 a two-thirds majority vote to adopt ~~the~~ ~~provisions~~ ~~hereof~~
 8 ~~them~~ by ordinance and, in said ~~the~~ ordinance, ~~shall have~~ has
 9 provided the manner of ~~in which~~ and time ~~at which~~ ~~when~~
 10 said ~~the~~ municipal court ~~shall is to~~ be established. ~~said~~
 11 ~~The~~ ordinance ~~shall must~~ be consistent with the provisions
 12 of this act ~~chapter~~.
 13 Section 2. Section 11-1703, R.C.M. 1947, is amended to
 14 read as follows:
 15 "11-1703. Election of judges -- term of office. (1)
 16 ~~There~~ ~~One judge of each municipal court~~ shall be elected at
 17 the general city election ~~in the year~~ ~~1936~~ ~~in all~~ ~~cities~~
 18 ~~with a population of twenty thousand (20,000) and over~~ ~~one~~
 19 ~~judge of municipal courts~~ ~~the term of such judge so elected~~
 20 ~~shall commence on the first Monday in May 1936 and~~
 21 ~~terminate on the first Monday in May 1938~~ ~~Thereafter~~
 22 ~~judges of municipal courts shall be elected at the general~~
 23 ~~city elections in all even numbered years.~~ ~~The judge's term~~
 24 ~~shall commence on the first Monday in May following the~~
 25 ~~election.~~ Such judges ~~The judge~~ shall hold office for the

INTRODUCED BILL

term of two ~~4~~ years from the first Monday of May in the year in which they are elected and until their ~~his~~ successor is elected and qualified.

(2) All elections of municipal judges shall be under and are governed by the laws applicable to the election of city officials, except that the names ~~name~~ of candidates a candidate for municipal judge shall be placed on the ballot to be used at such election without any party designation or any statement, measure, or principle which the candidate advocates or any slogan after his name."

Section 3. Section 11-1704, R.C.M. 1947, is amended to read as follows:

"11-1704. Qualifications and salary. Municipal judges shall ~~A municipal court judge must~~ have the same qualifications as judges a judge of the a district court, as set forth in Article VII, section 9, of the 1972 Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least 2 years prior to the date of appointment or election, and A municipal court judge must be a resident and voter in the city for in which he is elected at the time of his election.

(2) The salary of such judges the municipal court judge shall be set by city ordinance and shall be payable monthly by the city treasurer of the city in which such court is."

Section 4. There is a new R.C.M. section that reads as follows:

Restrictions on municipal court judges. No municipal court judge may practice law or hold office in a political party during his term of office.

Section 5. Section 11-1705, R.C.M. 1947, is amended to read as follows:

"11-1705. Courtroom and supplies. A room for such the municipal court, with necessary furniture, fixtures, and supplies, shall be provided by the county city wherein said city the court is located."

Section 6. Section 11-1708, R.C.M. 1947, is amended to read as follows:

"11-1708. Sessions of the court. Such the municipal court shall be in continuous session from 10:00--o'clock 9 a.m. to 4:00--o'clock 12 noon and from 1 p.m. to 4 p.m. on every judicial day or such other hours as the judge thereof may designate except that, during the time when the district court of the county in which said municipal court is located is in session, the municipal judge may in his discretion suspend court except nonjudicial days. The judge may designate additional hours as he, in his discretion, sees fit."

Section 7. Section 11-1710, R.C.M. 1947, is amended to read as follows:

1 "11-1710. Summons -- time for answer. Summons in
2 municipal court shall be signed by the clerk and shall
3 conform ~~as near as may be~~ to the provisions of section
4 93-3003 M.R.Civ.P., Rules 4 and 12(a), except that the time
5 for answering ~~shall be~~ is ten 10 days instead of twenty."

6 Section 3. Section 11-1711, R.C.M. 1947, is amended to
7 read as follows:

8 "11-1711. ~~Practice--reply~~ Applicability of rules for
9 justices' courts -- reply to counterclaim or new matter. (1)
10 The provisions of sections 93-6901 to through 93-7405,
11 ~~inclusive~~ and sections 93-7701 to ~~through~~ 93-7714,
12 ~~inclusive~~ are hereby ~~adopted and made~~ applicable to
13 ~~practice and procedure in~~ municipal court ~~courts~~, except
14 where ~~when~~ the same ~~they~~ are repugnant to ~~inconsistent with~~
15 the provisions of this act ~~chapter~~. The ~~the~~ words
16 "Municipal--Court" "municipal court" being substituted for
17 justice court, and "judge" for justice of the peace where
18 ~~the same appears in said chapters.~~

19 {2} Where ~~whenever~~ the answer contains a counterclaim
20 or any new matter, the plaintiff, ~~if he does not demur~~
21 shall within five 2 days after the service and filing of the
22 answer, reply to ~~such the~~ counterclaim or new matter in the
23 manner and form provided for in section 93-3601 M.R.Civ.P.,
24 Rules 7(a), 6(e)(2), and 10(b)."

25 Section 9. Section 11-1718, R.C.M. 1947, is amended to

1 read as follows:

2 "11-1718. Fees and fines. The fees and fines in
3 municipal court shall be the same as the fees and fines
4 provided by law for justice ~~justice's~~ court, and all fees
5 and fines collected by ~~such the~~ court shall be paid into the
6 city treasury."

7 Section 10. Repealer. Section 11-1709, R.C.M. 1947, is
8 repealed.

-End-

The meeting was called to order by Chairman Brand at 9:00 a.m., roll was taken, with all members present.

Hargesheimer presented his summary, see attachment #1.

HB 247-Rep. Palmer, sponsor--This is a housekeeping measure to modify the court codes enacted in 1935. Missoula adopted these in 1975. What it provides--it requires a population of 10 - 20 thousand for establishing municipal courts, provides for elections, establishes court records. I have the city attorneys from Missoula and Kalispell to testify.

FRED ROOT, Missoula City Attorney--The salary was set in 1935 at \$3,000. We had to wait until the following election, so as not to put the present judge out of office. Some of the changes are necessary--one of the big ones - the old code required that the county supply the materials for the court - now the city has to. The other statute required 5 years of experience, this bill only asks two. The old codes required off year elections - this bill gives 4 year terms, and it can be held when other elections are. We want the judge to be able to set his own hours. We now have 3 district judges who operate all of the time. The old codes were antiquate in this way. This bill gives civil jurisdiction, but it is cut down. It also restricts the municipal judge from having an independent practice. The bill makes it a court of record, so that an appeal is a new trial, and only records of the first trial are kept. Missoula has been trying to upgrade its courts. We have had lawyers on our court for the last two terms and we would like to continue to upgrade them.

N.F. DONAHUE, Kalispell City Attorney--We have been working constantly to upgrade our courts, but no specific problem was presented for implementation. Most cities will find this type of court more acceptable. I am also on the Judiciary Committee for the State Bar Association. The objective of everybody should be to upgrade the courts. If we give the cities the chance, it should help. The fact that we have a justice court in each county is good, but the qualifications for JP make it so that they are not really prepared. Recently, the jurisdiction was extended; and most people who have larger cases want a qualified judge. We want to give the citie the option to put this in effect. Missoula has been progressive. One of the reason that we want this is because we are a city of 11,000 people, and with the former population restriction we can't.

DAN MIZNER, League of Cities and Towns--We support this. 27 city attorneys had a meeting and discussed this bill, and recommended amendments. The process needs upgrading - replacement of police judges and JP's. This bill is not adaptable to small towns, but ones with 10,000 or more need it. This is not included in HB 122. The commission's decision was not to put this into 122. The larger city attorneys felt this should be separate. Although this could be amended into 122.

O'CONNELL--Under the mayor-council form of government, the police judge is elected, but now they appoint him. Under this would he be elected? ROOT--No. MIZNER--If we can get this bill through now, we can examine the other system. MULAR--What would be the original jurisdiction as far as monetary civil cases? DONAHUE--1500 - city judge, county judge, and JP - the JP would be deleted. MULAR--How would this conflict with the statutes on small claims courts? DONAHUE--There are some bugs in the small claims court law today. I think the jurisdiction limit is too high. If they would establish a small claims division of this and JP courts, it would work better. A JP doesn't have to be a lawyer. MULAR--Would your jurisdiction allow you to hear cases without council for small claims? DONAHUE--Yes. MULAR--Would the rules of civil procedure apply? DONAHUE--Yes. MULAR--If it is a claim of less than 1500, can I take

it to you without counsel? DONAHUE-Yes. FEDEA-Why 4 years? ROOT-All city officials are 4 year terms. This simply makes it concurrent. I am retiring, so I have no interest other than to facilitate the court system. RYAN-Will the municipal court be like a police court? ROOT-This will be a substitute for the city court. If the bill goes through, the city has to make the effective date. RYAN-Where does the bill address the city commission form of government? ROOT-Nowhere. MIZNER-This would have to be amended into 122. BRAND-You said the city would provide services rather than the county. Have you had problems? ROOT-No, the law is just stupid. It isn't necessary for the city to provide. BRAND-You didn't want the judge to be in private practice - what is the salary now? ROOT-\$15,000, and people were afraid this wouldn't attract too many. We set them by ordinance. PALMER-I will remind you that this is permissive with the cities. If we don't get these adjustments, then Missoula will have to have a special election which costs \$11,000. It is an attempt to upgrade; and Missoula, Bozeman, and Kalispell, along with other cities, are interested - but remember, it is decided by the people.

HB 447-Rep. Sivertsen, sponsor--If you have talked to local clerks and recorders, you will know why this is here. There are too many mailings, and they are costly. The most obvious mess is when the elector does not vote because he moved - so the mailing is useless anyway. The return is low, and the cost is high. Although it isn't in the bill, my clerk and recorder suggested that this could be put in the paper.

HELEN KOVICH, Lewis & Clark County Clerk and Recorder--We had 25,587 registered voters and we sent 6,269 cards out to people who didn't vote. These are people who have moved, or died, etc. and we were not notified. After we figured the cost from the time of registration, and so on -- initiatives, referendums and constitutional amendments -- we had spent \$32,000 just on mailings. I had a number of embarrassing calls about people who had died out of state. We cannot take these people off unless we get a certified death certificate.

JOHN BELL, Montana Association of Clerks & Records--Mrs. Kovich has said it all, but I will answer any questions.

JO ANN WOODGERD, Deputy Secretary of State--We agree that the notices are a burden, and unnecessary. Whether some provisions are needed for an affidavit in the event of erroneous cancellation is something worth considering.

OPPONENTS

MICHAEL PICHETTE, Secretary, Central Democratic Party--This and HB 432 deal with registration requirements. What you are dealing with besides mechanical items, are peoples' right to vote. Let's hope we keep registration procedures to a minimum, so as not to keep people from voting. This offers no solution to what you are removing. The government requires you to register in the first place, so you should be notified of cancellation. A lot of people only vote in presidential elections. I would rather see this killed if you don't replace it with something.

ERNIE POST, AFL-CIO--We are sort of opposed. We think people ought to be able to vote easily. You certainly get notice of delinquency in bill paying. I think we should look at another method - at least advertise that people are being removed. Especially during city elections, where failure to vote requires new registration. We hope this, in its present form, is DO NOT PASS.

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I don't think this is what Vincent was trying to do. Either strike the amendment and add a separate section; or depend on 122 passing, which has this provision.

VINCENT-The filing fees are mostly set according to the salary. I am worried about local elections; and I think it would be fairer if they didn't have the petition, and had more equitable filing fees. We will work on the amendment.

EXECUTIVE SESSION

HB 247-Mular moved to transfer it to the Local Government Committee.

MULAR-In the testimony, Mizner said that this isn't contained in 122 because it was repealed out. We feel this should be in there. ROBBINS-122 does repeal all municipal courts, and this could be written in as an amendment.

The motion to transfer carried with Robbins and O'Connell voting no.

HB 432-Mular moved DO NOT PASS, with Kanduch seconding, the motion carried unanimously.

HB 438-Mular moved to pass it to a day uncertain, in order to add amendments, Bardanouve seconded.

ROBBINS-I would suggest amendments about none paying jobs.

Mular withdrew his first motion, and moved that the bill be put in a subcommittee, Kanduch seconded, and the motion carried unanimously -- Mular, Chairman, with Robbins and Kropp.

HB 447-Mular moved DO NOT PASS, Robbins seconded. Lien made a substitute motion of DO PASS, with Meyer seconding.

BARDANOUE-Won't this leave people unaware that they have been cancelled? BRAND-Yes. RYAN-I agree with Francis; I think the fiscal note is right, and I feel that we shouldn't be doing the bookkeeping for clerks and recorders. SMITH-Anyone who cares about local government will vote. LIEN-The notice requirement - mostly everybody, one way or another, knows that you have to re-register. The lists are easily checked. FEDA-Most organizations work on registration and I think it is healthy. I think you get more people to vote with this and 432. KANDUCH-I suggest some sort of amendment to put the list in the paper. MEYER-Why not put a whole page ad in the paper? BARDANOUE-It may be cheaper, but who is going to look through the whole list?

Kanduch moved his aforementioned amendment, and the motion carried with Brand, Ryan, Turner, and Bardanouve voting no.

Mular moved AS AMENDED DO PASS, Robbins seconded.

LIEN-I am against this. I clerked elections for years, and there's a process for this. If you aren't shown on the list, you go ahead and vote in a "Challenged Ballot category. This is held until your registration is confirmed. Whether this is added to the ballot box or not, this is already taken care of. FEDA-This will change the intent of the bill. BARDANOUE-I don't think we can do this.

Mular's motion failed.

HOUSE BILL 602: Representative O'Keefe, chief sponsor, passed out copies of the bill showing amendments being proposed. Representative O'Keefe said he has cut out half of the bill so we have a modified piece of legislation. What he is talking about is licensing and bonding. This deals with the plumbers' code. The state says to examine, and the city says to examine; the state provides for validation and the city ordinance requires a license and provides that it may be revoked and fined; the state charges a fee and city charges a fee; state requires a bond and city requires a bond. He read from a copy of an ordinance by a city pertaining to the plumbers' code and compared it to a piece of material by the state establishing a board of plumbers. Rep. Kimble said this is not an isolated case. The state requires these things, and you have a city doing the same thing and the only reason is to get revenue. Representative O'Keefe introduced Robert W. Minto, Jr., Missoula Multiple Listing Service, who spoke on the bill and said they have a problem on occupational licensing. The city recently proposed to enact an ordinance requiring licenses for real estate brokers in Missoula. Its purpose was to generate money. If he obtains a license from the state of Montana, that should give him the right to work anywhere in the state.

Other proponents were:

Cliff Christian, Montana Association of Realtors, Helena, felt the state has the ultimate authority in licensing. To license a business is fine but not to license each person.

Rod Grudgel, Montana State Pharmaceutical Association and Montana Nursing Home Association, is in support of the bill and they don't need any further licensing.

H. S. Hanson, Montana Technical Council, is in support of this bill.

Roland D. Pratt, Optometric and Funeral Directors Association, signed the witness sheet in support of HB 602.

Opponents were:

Dan Mizner, representing the League of Cities and Towns, is in opposition to the bill.

Representative O'Keefe closed on HB 602.

HOUSE BILL 247: Representative Palmer, chief sponsor, said this bill was heard in State Administration, and he read from prepared testimony - exhibit 4.

Representative Palmer introduced Fred Root, city attorney of Missoula, who explained that the problem is with the salary, which is taken care of in the proposed amendments. We have some cleanup amendments that were not objected to in State Administration. In May, Missoula will have a municipal judge and will comply with this law. Proposed amendments are - exhibit 5.

Dan Mizner, representing the League of Cities and Towns, supports this legislation.

Opponents were:

Harry Hansen, resident of Missoula County, spoke as an opponent and said that when things run contrary to state law, then people come over to change the law. It is a court of record and would have to hire a recorder.

Representative Palmer said in closing this is permissive legislation, and if a city wants this elected official, they will make the decision. We are not here to debate the law but to clear up ambiguities in the law. The issue is to update the law.

HOUSE BILL 600: Representative Harper, chief sponsor, said this is an act to adopt salaries for the office of the coroner, and he read from a prepared statement.

Proponents were:

Tom Honzel, representing the coroners, said in researching the law they found they could only be compensated by a fee. He can't find any justification for keeping the coroners on a fee system, and doesn't think the fee system is realistic. If they are going to attract qualified personnel, they will have to provide a salary. The salary is based on a percentage of the salary of the sheriff.

M. E. "Mickey" Nelson, representing the Montana Coroner's Association, Helena, said in this county there were 90 deaths and only one person required to be called and that is the coroner. The only person to notify the law of a question in the death is the coroner. We should look at areas of the overall concept of fees.

Roland D. Pratt, representing the Montana Funeral Director's Association, said they support HB 600 and feel if justifiable compensation is given, some of our people would get out of the job. In smaller counties the coroner's duties are given to funeral directors.

Opponents were:

Dean Zinnecker, representing the Montana Association of Counties, said you are looking at a tremendous increase in many counties, and he doesn't know why it is tied to the sheriff's salary. It is not a full-time job in most counties.

Representative Harper closed on HB 600.

The committee went into executive session for the purpose of taking action on the following bills:

HOUSE BILL 521: Representative Ramirez moved that HB 521 DO NOT PASS. Representative Bertelsen noted this sets up the mechanism. Representative Gerke made a substitute motion that HB 521 DO PASS. During discussion by committee, Rep. Roth asked if there is any revenue sharing now. Waldron - said the state does pass on about 12 million dollars, and this

HOUSE BILL 646:

Representative Palmer moved that HB 646 DO PASS. Question, motion carried. Representative Vinger voted NO.

HOUSE BILL 671:

Representative Gerke moved that HB 671 DO PASS. Question, motion carried with 6 voting YES. Representatives Roth, Ramirez, Vinger, Pistoria, and Hurwitz voted NO.

HOUSE BILL 675:

Representative O'Connell moved that HB 675 DO PASS. There was discussion by the committee. Question, motion carried.

HOUSE BILL 229:

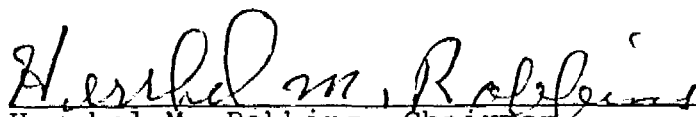
Chairman Robbins explained that this bill was transferred from another committee. The chairman of State Administration decided to bring back into this committee because of an effect it might have on HB 122 or HB 122 on it. It takes care of all employees for group insurance. All this does is put back into state law the health insurance for state employees and school districts. This bill excludes cities and counties, but they are in another bill. Representative Hurwitz moved that HB 299 DO PASS. Gerke - House Bill 122 repeals the section of law pertaining to employees as far as health insurance. This covers state and school districts and HB 122 covers local government. Ramirez - is there any way we can incorporate this in HB 122. Gerke - House Bill 122 does not deal with state employees. Question on Representative Hurwitz' motion that HB 229 DO PASS, motion carried. Representative Waldron voted NO.

HOUSE BILL 247:

Representative Gerke moved that HB 247 DO PASS. Representative Waldron moved to amend HB 247 on page 1, line 25, following: "census,", strike: "shall", insert: "may". Motion carried. Representative Palmer moved to adopt the proposed amendments - exhibit 2. Motion carried. Representative Gerke moved that HB 247 DO PASS AS AMENDED. Question, motion carried. Representative Roth voted NO.

The meeting adjourned at 9:35 AM.

Respectfully submitted,


Hershel M. Robbins, Chairman

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 18, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:35 a.m. in Room 442 of the State Capitol Building on the above date.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Rep. Palmer - District 96, Missoula
Fred Root - City Attorney, Missoula
David L. Hunter - Montana League of Cities and Towns
Rep. John Scully - Bozeman
Tom Honzel - County Attorneys Assn.
Mike McGrath - Department of Justice
Sheriff Hammermeister - Pondera County (Conrad)
Rep. Brand - District 28, Deer Lodge
Sgt. Stollfuss - Montana Highway Patrol
Rep. Harper - District 30, Helena
Gerald Neeley - Montana Medical Assn.
John Frankino - Director, Montana Catholic Conference

CONSIDERATION OF HOUSE BILL 247:

Rep. Palmer of District 96 at Missoula, sponsor of the bill, said this is a measure intended to modify the provisions of the municipal court. He then read a prepared statement. (See Exhibit 1)

The first proponent to testify was Fred Root, the city attorney at Missoula, who said the municipal court is for the city and that the city council has set the salary for judge of that court at \$15,000 per annum to attract people to run for that office. He distributed a set of proposed amendments to the committee for their consideration and said that all city cases are filed under state law with the fines and forfeitures deposited with the city treasurer. He thinks other Montana cities are waiting to see what Missoula does in regard to this issue.

Another proponent was David L. Hunter of the Montana League of Cities and Towns who said that that organization supports this bill and that other cities may adopt this form after they see what Missoula's experience is.

There were no opponents to HB 247.

During questioning, it was brought out that the city and municipal courts in Missoula are jammed with cases. However, Fred Root said that they will be ready to open their court in May and agreed to the committee placing the effective date at May 1st for this act.

The Chairman thanked the witnesses for testifying and said that the bill would be taken under advisement.

CONSIDERATION OF HOUSE BILL 498:

Rep. Scully of Bozeman, sponsor of the bill, said that subpoena powers for county attorneys is the subject of this bill. County attorneys presently do not have subpoena powers, but legislative committees, grand juries, etc., do have them. However, he believes county attorneys should have subpoena powers, even though many states are going solely with the grand jury system, because he does not like that system. He said further that the bill had been thoroughly discussed and was approved by the Crime Control board.

Since Rep. Scully had to attend another meeting, the chairman allowed Sen. Towe to ask questions of him at this time. One of the questions was how the state could get a county attorney to not abuse the subpoena power. Rep. Scully said that this could be done by requiring the county attorneys to have testimony recorded, transcribed and signed by them. He feels that the county attorney investigative subpoena is much better than the grand jury system. At this time, he asked to be allowed to respond to any amendments the committee may propose and the Chairman, Senator Turnage, instructed the secretary to send a copy of the proposed amendments to him.

The first proponent to testify was Tom Honzel, representing the County Attorneys Assn., who said that we are beginning to have a number of cases of business and land fraud in this state and that the only way people can be made talk on these things is by subpoena power. If we had this power in Montana, we would have more success in getting at the drug pusher. He said that they at first had assumed county attorneys had this power under §95-1803, however, they do not. He does not believe this power would be abused for you do have to rely on the judges to issue the subpoenas.

The next proponent to testify was Mike McGrath from the Department of Justice who said that they strongly support this bill and that they do not think that it always substitute for the grand jury system. However, the department feels that a subpoena issued upon a signed affidavit is very important, because the main thing it is for is to take a deposition of a witness. If a person wants counsel, they can have it, and an indigent can get assistance from Montana Legal Services.

Sheriff Hammermeister of Pondera County at Conrad was the next proponent. He represents the Sheriffs & Peace Officers Assn.. He presented a poll which they had taken within their association. (See Ex. 3) Although they feel very highly of the present attorney general, they do not want to see that office have the subpoena powers. Therefore, he proposed the committee amend the bill by limiting the attorney general's subpoena powers to just the workmen's compensation investigation. Otherwise, the sheriffs do not want to see the attorney general have the subpoena powers.

There were no opponents to HB 498 and the hearing was closed.

CONSIDERATION OF HOUSE BILL 533:

Rep. Brand, District 28 at Deer Lodge, sponsor of the bill, told the committee that the legislation had been requested by the Montana Highway Patrol because nothing in the law defines "careless driving, negligent driving, or reckless driving".

Sgt. Stollfuss of the Montana Highway Patrol testified as a proponent saying that we do not have a careless driving act in state law now. He thought that people would plead to that rather than "reckless driving" which could take months to try under the Habitual Offender Act. He presented the committee with some pictures that brought out his testimony. (See Ex. 4)

There were no opponents to the bill.

CONSIDERATION OF HOUSE BILL 371:

Rep. Harper of District 30 in Helena, sponsor of the bill, told the committee this bill is to establish a statutory definition of death. After reading the bill, he said that we have been operating under Black's Law dictionary definition, but today we are concerned with "brain death". There are also further needs for a new definition because of transplant donations and operations. The organ donation has now emphasized the problem of malpractice which has been growing. The American Bar Assn. definition is in use in many states now. That definition will change according to the changes in medical science. When science progresses, usual and customary standards will change also. This is not an euphanasia bill. There are 15 advantages of the American Bar Assn. definition. He read these to the committee and then asked for support of this definition as it is necessary because it would assure protection to the physician and the patient.

The first proponent to testify was Gerald Neeley who represents the Montana Medical Assn. and who said that they support the bill because it enhances changing medical criteria. It covers brain, heartbeat and death tests -- usual and customary standards which will change, and could eliminate the problems in transplanting. This bill would help the legal problems in this area.

John Frankino, director the Montana Catholic Conference, said that they had opposed the bill as originally introduced, but now support it as amended. He presented the committee with a paper on the research done on this subject by the Montana Catholic Conference. (See Exhibit 5)

There were no opponents present. The witnesses were thanked for their testimony and excused.

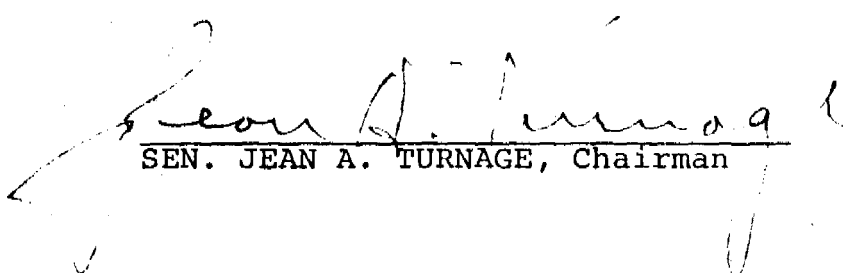
DISPOSITION OF HOUSE BILL 247:

Sen. Murray moved the proposed amendments of Fred Root of

-4-

Missoula with the exception of amendment #2 be adopted. The motion carried unanimously. He then moved that HB 247 as amended BE CONCURRED IN. The motion carried unanimously.

There being no further business, the committee adjourned at 11:10 a.m..


SEN. JEAN A. TURNAGE, Chairman

JUDICIARY COMMITTEE

Date 5/18/77

[illegible]

(H.B.)

REPRESENTATIVE BOB PALMER

STATE ADMINISTRATION COMMITTEE HEARING H.B. 247

(OK.)

February 2, 1977

My name is Representative Bob Palmer from House District 96 in Missoula and I am the sponsor of H. B. 247 that is a housekeeping measure intended to modify the existing provisions of the municipal court code which was enacted by the legislature initially in 1935 and modified in 1974 to allow each city to set the salary for their municipal judge rather than continue the restriction that prevented any city from adopting the court.

The Missoula city council on November 8, 1976, voted to adopt the municipal court provisions and is now requesting that the legislature make some modifications to clear up the ambiguities in the present state statutes and make it possible for Missoula and other cities to use this option of upgrading their local court systems.

The provisions in the bill would reduce the population from 20,000 to 10,000, hold the election with the other city elective offices, reduce from five to two years the experience of an attorney required to hold the office, hold the city not the county responsible for paying for the facilities and receive the fee and fines from the court, establish the court hours, provide for a court of record that may be waived with the consent of all parties, provide for an appeal on a stipulated fact or issues, and reduce the time for answering the complaint from 20 days to 10 days.

This is a very important bill for the people of Missoula and in support of it I would like to introduce the City Attorney of Missoula, Mr. Fred Root, who will testify in support of this measure.

Thank you.

REPRESENTATIVE BOB PALMER

(62.2)

NECESSARY AMENDMENTS TO H.B. #247

Page 2 Line 10

10. ~~said~~ the municipal court ~~shall~~ is to be established, and
shall assume continuing jurisdiction over all pending police
court cases. The ordinance OK.

Page 3 Line 21

21. Substitute "County" where "City" appears } Out

Page 7 Line 4

4. provided by law ^{or ordinance} ~~for-justice-justice's-court~~, and all fees OK

Amended. Effec. date. OK.

HOUSE BILL NO. 247
INTRODUCED BY PALMER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MUNICIPAL COURTS; TO CHANGE THE POPULATION REQUIREMENT FOR CITIES ADOPTING MUNICIPAL COURTS FROM 20,000 TO 10,000; TO PROVIDE THAT MUNICIPAL COURT JUDGES BE ELECTED EVERY FOUR YEARS; TO PROVIDE QUALIFICATIONS FOR AND RESTRICTIONS ON MUNICIPAL COURT JUDGES; TO PROVIDE THAT THE CITY PROVIDE THE FACILITIES FOR THE COURT; TO PRESCRIBE THE SESSIONS OF THE COURT; AND TO PRESCRIBE THE AMOUNT AND DISPOSITION OF FINES IN THE COURT; AMENDING SECTIONS 11-1701, 11-1703, 11-1704, 11-1705, 11-1708, 11-1710, 11-1711, AND 11-1717, 11-1718, AND 93-102, R.C.M. 1947; REPEALING SECTION 11-1709, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 11-1701, R.C.M. 1947, is amended to read as follows:

"11-1701. Municipal courts--cities--where--creation authorized--adoption-of-provisions-concerning Establishment of municipal court. (1) There is hereby created in all cities in the state of Montana with a population of twenty thousand--(20,000) 10,000 or more persons, according to the

last federal census, ~~shall~~ MAY have a court to be known and designated as ~~the~~ municipal court of the city of (designating the name of the city) of the state of Montana. Such ~~the~~ court shall be a court of record.

(2) ~~provided, however, that the~~ The provisions of this act--~~shall~~ chapter apply only after the governing body or council of such ~~the~~ city or cities--~~shall have~~ has elected by a two-thirds majority vote to adopt the--provisions--hereof ~~them~~ by ordinance and, in said ~~the~~ ordinance, ~~shall have~~ has provided the manner of, in which and time at which, ~~when~~ said ~~the~~ municipal court ~~shall is to~~ be established AND SHALL ASSUME CONTINUING JURISDICTION OVER ALL PENDING CITY COURT CASES. Said ~~the~~ ordinance ~~shall must~~ be consistent with the provisions of this act chapter."

Section 2. Section 11-1703, R.C.M. 1947, is amended to read as follows:

"11-1703. Election of judges -- term of office. (1) ~~There One judge of each municipal court shall be elected at the general city election in the year 1936 in all cities with a population of twenty thousand (20,000) and over--one judge--of--municipal--courts--The term of such judge so elected shall commence on the first Monday in May 1936--and terminate on the first Monday in May 1938--Thereafter judges of municipal courts shall be elected at the general city elections in all even-numbered years. The judge's term~~

1 ~~shall commence on the first Monday in May following the~~
 2 ~~election. Such--judges~~ The judge shall hold office for the
 3 term of two ~~4~~ years from the first Monday of May in the year
 4 in which they are elected and until their ~~his~~ successor is
 5 elected and qualified.

6 (2) All elections of municipal judges ~~shall be under~~
 7 ~~and are~~ governed by the laws applicable to the election of
 8 city officials, except that the ~~names~~ name of candidates a
 9 ~~candidate~~ for municipal judge shall be placed on the ballot
 10 ~~to be used at such election~~ without any party designation or
 11 any statement, measure, or principle which the candidate
 12 advocates or any slogan after his name."

13 Section 3. Section 11-1704, R.C.M. 1947, is amended to
 14 read as follows:

15 "11-1704. Qualifications and salary. Municipal--judges
 16 shall A municipal court judge must have the same
 17 qualifications as judges a judge of the a district courts as
 18 set forth in Article VII, section 9, of the 1972 Montana
 19 constitution, except that a municipal court judge need only
 20 be admitted to the practice of law in Montana for at least 2
 21 years prior to the date of appointment or election; and A
 22 municipal court judge must be a resident and voter in the
 23 city for in which he is elected at the time of his election.

24 (2) The salary of ~~such--judges~~ the municipal court
 25 judge shall be set by city ordinance and ~~shall be~~ payable

1 monthly by the city treasurer of ~~the--city--in--which--such~~
 2 ~~court is."~~

3 Section 4. There is a new R.C.M. section that reads as
 4 follows:

5 Restrictions on municipal court judges. No municipal
 6 court judge may practice law or hold office in a political
 7 party during his term of office.

8 Section 5. Section 11-1705, R.C.M. 1947, is amended to
 9 read as follows:

10 "11-1705. Courtroom and supplies. A room for such the
 11 municipal court, with necessary furniture, fixtures, and
 12 supplies, shall be provided by the county city wherein said
 13 city the court is located."

14 Section 6. Section 11-1708, R.C.M. 1947, is amended to
 15 read as follows:

16 "11-1708. Sessions of the court. Such The municipal
 17 court shall be in continuous session from 10:00 o'clock 9
 18 a.m. to 4:00 o'clock 12 noon and from 1 p.m. to 4 p.m. on
 19 every judicial day or such other hours as the judge thereof
 20 may--designate--except--that--during--the--time--when--the
 21 district--court--of--the--county--in--which--said--municipal--court
 22 is--located--is--in--session,--the--municipal--judge--may--in--his
 23 discretion--suspend--court except nonjudicial days. The judge
 24 may designate additional hours as he, in his discretion,
 25 sees fit."

1 Section 7. Section 11-1710, R.C.M. 1947, is amended to
2 read as follows:

3 "11-1710. Summons -- time for answer. Summons in
4 municipal court shall be signed by the clerk and shall
5 conform ~~as--near--as--may--be~~ to the provisions of section
6 93-3603 M.R.Civ.P., Rules 4 and 12(a), except that the time
7 for answering ~~shall be is ten 10 days--instead-of--twenty."~~

8 Section 8. Section 11-1711, R.C.M. 1947, is amended to
9 read as follows:

10 "11-1711. ~~Practice--reply~~ Applicability of rules for
11 justices' courts -- reply to counterclaim or new matter. (1)
12 The provisions of sections 93-6901 to through 93-7405
13 inclusive and sections 93-7701 to through 93-7714
14 inclusive are hereby--adopted--and--made applicable to
15 practice--and--procedure--in municipal court courts, except
16 where ~~when the same they~~ are repugnant to inconsistent with
17 the provisions of this act chapter. The the words
18 "Municipal Court" "municipal court" being substituted for
19 justice court and "judge" for justice of the peace where
20 the same appears in said chapters.

21 (2) Where ~~Whenever~~ the answer contains a counterclaim
22 or any new matter, the plaintiff--if he does not demur
23 shall within five 5 days after the service and filing of the
24 answer, reply to such the counterclaim or new matter in the
25 manner and form provided for in section-93-3601 M.R.Civ.P.,

1 Rules 7(a), 8(e)(2), and 10(b)."

2 SECTION 9. SECTION 11-1717, R.C.M. 1947, IS AMENDED TO
3 READ AS FOLLOWS:

4 "11-1717. Appeals. ~~An appeal shall lie to the district~~
5 ~~court of the county in which the municipal court is~~
6 ~~established--as--from--a judgment of justice court or police~~
7 ~~court and the provisions of law applicable to such appeals~~
8 ~~shall apply and are hereby adopted, when the amount in~~
9 ~~controversy is less than one hundred (\$100.00) dollars there~~
10 ~~shall be no appeal unless the municipal judge shall certify~~
11 ~~that a doubtful question of law is involved upon which a~~
12 ~~final decision is desirable. (1) A party may appeal to~~
13 district court from a judgment of municipal court.

14 (2) Appeal from a municipal court may be limited by
15 requiring by ordinance that a minimum amount in controversy,
16 not to exceed \$200, be met before the district court has
17 jurisdiction to hear the appeal, except:

18 (a) if the judgment of the municipal court includes
19 incarceration no minimum amount in controversy shall MAY be
20 required for appeal; and

21 (b) upon petition by an aggrieved party the district
22 court may, in the interests of justice, accept appeal
23 jurisdiction notwithstanding the amount in controversy.

24 (3) The municipal court shall establish rules for
25 appeal to district court. The rules are subject to THE

1 ~~supreme court's rule-making and supervisory authority."~~

2 Section 10. Section 11-1718, R.C.M. 1947, is amended
3 to read as follows:

4 "11-1718. Fees ~~and fines~~. The fees ~~and fines~~ in
5 municipal court shall be the same as the fees ~~and fines~~
6 provided by law for ~~justice justice's~~ court OR ORDINANCE,
7 and all fees ~~and fines~~ collected by ~~such the~~ court shall be
8 paid into the city treasury."

9 ~~SECTION 11. SECTION 93-102, R.C.M. 1947, IS AMENDED TO~~
10 ~~READ AS FOLLOWS:~~

11 "93-102. Courts of record. ~~The courts enumerated in~~
12 ~~the first three subdivisions of the last preceding section,~~
13 ~~and only those courts, are courts of record. The court of~~
14 ~~impeachment, the supreme court, the district courts, and THE~~
15 ~~municipal courts of record are courts of record."~~

16 Section 12. Repealer. Section 11-1709, R.C.M. 1947, is
17 repealed.

18 ~~SECTION 13. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON~~
19 ~~ITS PASSAGE AND APPROVAL.~~